MT LEGISLATIVE HISTORY

BEST COPY AVAILABLE

Chapter 123 1991

Bill H _____ S 85 Original bill & hist. ___C

H. Committee on Taxation		S. Committee on Taxation	
Hearing Date(s) Feb 15	✓C	Hearing Date(s) Jan 18	✓C
Mar 05	✓C	Feb 05	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Mar 05	✓C	Feb 06	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

1/30	2ND READING PASSED	48	0
1/31	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/01	FIRST READING		
2/01	REFERRED TO FISH & GAME		
2/07	HEARING		
2/09	COMMITTEE REPORT—BILL CONCURRED		
2/11	2ND READING CONCURRED	88	11
2/12	3RD READING CONCURRED	88	8
	RETURNED TO SENATE		
2/19	SIGNED BY PRESIDENT		
2/20	SIGNED BY SPEAKER		
2/20	TRANSMITTED TO GOVERNOR		
2/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 41	EFFECTIVE DATE: 1/01/92	

SB 84 INTRODUCED BY JACOBSON, ET AL.
PROHIBIT CORPORAL PUNISHMENT OF STUDENTS

1/14	INTRODUCED		
1/15	FIRST READING		
1/15	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/23	HEARING		
1/31	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/01	2ND READING PASSED	32	18
2/02	3RD READING PASSED	29	19
	TRANSMITTED TO HOUSE		
2/04	FIRST READING		
2/04	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/14	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED		
3/23	2ND READING CONCURRED	67	26
3/25	3RD READING CONCURRED	63	32
	RETURNED TO SENATE		
3/28	SIGNED BY PRESIDENT		
4/02	SIGNED BY SPEAKER		
4/02	TRANSMITTED TO GOVERNOR		
4/04	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 325	EFFECTIVE DATE: 4/04/91	

SB 85 INTRODUCED BY ECK
CLARIFY TAX EXEMPTION FOR CHARITABLE INSTITUTIONS
BY REQUEST OF DEPARTMENT OF REVENUE

1/15	INTRODUCED		
1/15	FIRST READING		
1/15	REFERRED TO TAXATION		
1/18	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/07	2ND READING PASSED	49	0
2/08	3RD READING PASSED	43	0
	TRANSMITTED TO HOUSE		
2/09	FIRST READING		
2/09	REFERRED TO TAXATION		
2/19	HEARING		
3/05	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	99	0
3/12	3RD READING CONCURRED	97	0
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/18	TRANSMITTED TO GOVERNOR		

3/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 123	EFFECTIVE DATE: 3/20/91	

SB 86 INTRODUCED BY ECK

CLARIFY OIL/NATURAL GAS TAX BY DELETING OBSOLETE REFERENCES TO INTERIM PRODUCTION

BY REQUEST OF DEPARTMENT OF REVENUE

1/15	INTRODUCED		
1/15	FIRST READING		
1/15	REFERRED TO TAXATION		
1/18	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/24	2ND READING PASSED AS AMENDED	50	0
1/25	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/26	FIRST READING		
1/26	REFERRED TO TAXATION		
2/07	HEARING		
3/05	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	96	2
3/12	3RD READING CONCURRED	98	0
	RETURNED TO SENATE WITH AMENDMENTS		
3/16	2ND READING AMENDMENTS CONCURRED	49	0
3/18	3RD READING AMENDMENTS CONCURRED	49	0
3/22	SIGNED BY PRESIDENT		
3/23	SIGNED BY SPEAKER		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 267	EFFECTIVE DATE: 3/29/91	

SB 87 INTRODUCED BY B. BROWN

CLARIFY JURISDICTION OF SMALL CLAIMS DIVISION OF DISTRICT COURTS

BY REQUEST OF BOARD OF REALTY REGULATION

1/15	INTRODUCED		
1/15	FIRST READING		
1/15	REFERRED TO JUDICIARY		
1/23	HEARING		
1/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/26	2ND READING PASSED	46	0
1/28	3RD READING PASSED	47	0
	TRANSMITTED TO HOUSE		
1/29	FIRST READING		
1/29	REFERRED TO JUDICIARY		
3/20	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED		
3/23	2ND READING CONCURRED	91	0
3/25	3RD READING CONCURRED	95	0
	RETURNED TO SENATE		
3/28	SIGNED BY PRESIDENT		
4/02	SIGNED BY SPEAKER		
4/02	TRANSMITTED TO GOVERNOR		
4/04	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 326	EFFECTIVE DATE: 10/01/91	

SB 88 INTRODUCED BY B. BROWN

CHANGE MEMBERSHIP AND TERM FOR CERTIFICATION ADVISORY COUNCIL

BY REQUEST OF BOARD OF PUBLIC EDUCATION

1/15	INTRODUCED

Dave Woodgerd, Chief Counsel, Department of Revenue, explained that Kaiser reported the value and tonnage of limestone mined as per DOR policy. They then sold the property. An audit later determined the report was inaccurate and DOR sought to recover the amount in dispute. Kaiser maintained they did not have to pay as they had sold the property. The District Court said that DOR still had the authority to levy the tax even though Kaiser had sold the property. The bill is simply putting that decision into the statutes.

He pointed out that a regular taxpayer is assessed by the Department and DOR does not have a right to go back to them for additional taxes after the property has been sold. Centrally assessed taxpayers submit a report to DOR and DOR then certifies a value based on that report.

Senator Towe asked if both the former owner and new owner would be attached if it is necessary to attach a lien.

Mr. Woodgerd replied the former owner would be attached. The new owner has protection under the lien statutes.

Senator Towe wondered if specific language was needed to specify the liability of the former owner.

Mr. Woodgerd said it was the opinion of DOR that the liability is inherent in the language of the bill.

Senator Van Valkenburg questioned the adequacy of the time limit in 15-23-116.

Mr. Alke said he felt it was adequate.

Senator Thayer asked if there is an either/or option as to which owner of the property DOR would assess.

Mr. Woodgerd replied the statute is clear that the person or corporation that owned the property at the time of the assessment is responsible for payment.

Closing by Sponsor:

Senator Grosfield closed.

HEARING ON SENATE BILL 85

Presentation and Opening Statement by Sponsor:

Senator Eck, District 40, sponsor, said the bill was introduced at the request of the Department of Revenue. It also addresses issues that have come up in appeals and court

decisions. The bill defines "institutions of purely public charity" and specifies property owned by such institutions and used for purely public charitable purposes.

Senator Eck referred to the case of Steer, Inc. vs the Department of Revenue is which the steers were sold with the proceeds being donated to further missionary work of the charitable group, Steer, Inc. In that decision, the steer was deemed taxable.

Senator Eck referred the committee members to the stricken material on page 5, line 2, referring to facilities for the care of the retired or aged or chronically ill. This material is reinserted on page 4, line 9, which provides a total exemption for facilities for the mentally ill, developmentally disabled and vocationally handicapped. However, the exemption is not because they are institutions of purely public charity.

Senator Eck said the Department of Revenue had submitted proposed amendments defining educational facilities and an explanation which she presented to the Committee (Exhibit #1).

The Supreme Court clarified the public charity exemption and further established that the dissemination of religious doctrine is not a qualifying charitable use. A 1965 Supreme Court decision concluded educational purposes are not limited in terms to the common scholastic institutions of grammar schools, high schools, colleges or universities. Many groups have set up programs disseminating information and a classification mechanism must be developed for those groups to determine what is an educational purpose.

Senator Eck said the whole issue of exempt organizations need to addressed. The intent of the bill is to clarify the court decisions. The impact of educational restrictions needs to be carefully considered and is certainly a broader issue than just defining institutions of purely public charity.

Proponents' Testimony:

Denis Adams, Director, Department of Revenue, presented his testimony to the Committee (Exhibit #2). He said the amendment also includes a clarification of "educational purposes". He said DOR recently lost a District Court decision involving the Highline Radio Fellowship. The appeal time has not expired and they are waiting to see how the Legislature will deal with the problem. Mr. Adams said they are looking for guidance from the Legislature in hopes of avoiding further costly litigation.

Opponents' Testimony:

Doug Kelly, Helena attorney whose law firm represented Steer, Inc. and Highline Radio Fellowship, said the District Court in Havre found the Highline Radio Fellowship to be an educational charity. Mr. Kelly explained the Steer, Inc. case stating the cows were owned by Steer, Inc., a 501-C3 organization in North Dakota. The cows in question were on a ranch in Garfield County, Montana, and carried the Steer, Inc. registered brand. The question was whether the cows were tax exempt and the county assessor determined the cows should be taxed. That decision was appealed to the County Tax Appeal Board which ruled in favor of the assessor. The case was ultimately appealed to the Montana Supreme Court which upheld the original decision to tax the "holy cows".

Mr. Kelly said he is concerned with the far-reaching impacts of the changes being proposed which go as far back as the Flathead Lake Methodist Camp decision in 1965. He said that if the legislation passes as written all church camps will be taxed. He questioned if that was really the intention of the legislation. The new definition of "educational" is more of a classic definition that will eliminate many programs and be strictly interpreted as education in a classroom type setting. He does not dispute the necessity of investigating the whole area of exemptions as litigation has been ongoing for a number of years and clarification is certainly indicated.

Mr. Kelly suggested there are several key points to be considered. He referred to the page 5, line 15. He submitted "gain or profit" is not the determining factor, citing a church which some years does make more money than it spends but other years is not as successful. He questioned whether that falls under the "gain or profit" distinction and said that is a lawyer relief term which simply contributes to litigation. He suggested striking the language "makes no gain or profit as evidenced by a ruling or determination by the internal revenue service that it". That then qualifies all organizations under 501-C3 which is well defined and hinges on the nature of the organization.

He further questioned the language on page 5, line 21, "indefinite in number". He wondered if any organization could qualify under that criteria. Again, he felt the language is vague and simply encourages litigation.

Mr. Kelly referred to the language on page 5, lines 22-24, "The organization's activities prevent persons benefitted from becoming charges or burdens on society or the state.". He asked about the YMCA, Boy Scouts and similar organizations which could not be designated a charitable entity as they do not keep people from becoming a burden to the state. This would require tracing a line of fiscal benefit to the state.

Mr. Kelly also felt there was a certain ambiguity in the provisions of subsection (iv), pages 5 and 6, which would indicate it is all right to have bingo but not "holy cows". He concluded his testimony but saying there needs to be careful study before these far-reaching changes are made and acknowledged the questions and decisions are difficult.

Ed Matter, Havre, General Manager of KXEI, Highline Radio Fellowship, said his station is the only non-commercial radio station in the state. The station went on the air in 1983 and exists solely on contributions. He said as a school board member for six years he felt he understood the definition of education. He thought the District Court decision was well worded and that his station fit the definition of educational. His concern is with the educational amendment proposed by DOR. He agrees with DOR that clarification is necessary and serious consideration needs to be given to the many entities that may end up being taxed that really should be exempt.

Bryan Asay, partner in the Kelley and Asay law firm, said he represented both Steer, Inc. and Highline Radio Fellowship in the recent court cases. The basic issue, when attempting to create an exemption for property used for educational purposes, is to define "education". Mr. Asay suggested the adoption of a comprehensive application of the term as case law in Montana has done for many years. He quoted from the Flathead Lake Methodist Camp decision which said "the term 'educational purposes' is not by the weight of authority defined in terms of the common scholastic institutions of grammar school, high school and university or college". "Organizations for the social, intellectual, physical, or religious welfare of children are exempt equally." Mr. Asay said he felt legislative intent was to consider the comprehensive definition.

The DOR amendments would provide an exemption only if there are four walls and a teacher in front. He felt those stringent qualifications would eliminate from exemption the great majority of programs and organizations throughout the state, including the Flathead Lake Methodist Camp. He further stated the DOR interpretation is consistent with a comprehensive definition of education. He felt the bill is specifically intended to remove the exemption that Highline Radio has gained through their court challenge. This case started in 1984 and has gone through the process from local tax appeals through district court. Now, six years later, the Department wants to change the rules. He urged the committee members to carefully consider the amendment in light of the case law which has already been established in Montana and is working well.

Bill Driscoll, attorney, Catholic Church, said he shares the same concerns as Mr. Kelley and Mr. Asay. The Flathead Camp case has been a good statement of law for everyone. The proposed changes will encourage more litigation rather than less. History has shown that DOR has attempted to deny exemptions in the past

as the Catholic Church was involved in extensive litigation over their previously exempt facilities. He urged the members not to pass the proposed bill.

Katherine Donnelley, a Helena lawyer, stated she was an associate lawyer assigned to write the explanation letter for a medical research institute. They had found, to their dismay, that they did not fit any of the categories of exemption clearly except for purely public charities. They were very concerned about their ability to receive grants if they were not tax exempt. She felt the real ambiguity in the bill is on page 5, lines 22-24, which references persons benefitted prevented from becoming a burden on the state. She urged the members of the Committee to consider clarification of that section.

Charles Brown, Helena Family YMCA, said he was concerned about the broad and ambiguous definition of education. He cited the many programs of the YMCA which would be impacted if their exemption was denied. He asked the Committee to carefully consider the ramifications of the proposed amendments and to clearly define the language in the bill.

Questions from Committee Members:

Senator Gage expressed concern about people such as Donald Trump, Ted Turner, and Jane Fonda establishing residences and applying for exemption under the proposed language on page 4, lines 9-12 relating to facilities for retired, aged, or chronically ill. He felt we should consider carefully leaving it in the original position in the bill under institutions of purely public charity.

Senator Towe noted he had written an article for "Law Review" where he predicted this issue would be the most volatile in the next decade. He asked Mr. Adams if he intended to exempt the property of such organizations as the Boy Scouts, YMCA, and church camps.

Mr. Adams said DOR is trying to prevent the expansion of the exemption base and certainly did not intend to exclude any of those groups. He was concerned that expansion could open exemptions to ballet schools, karate schools, and homes that are used for day care centers. He said there is no prohibition that limits to non-profit organizations. He said the Department could accept 501-C3 criteria if the legislature so defined.

Senator Towe said he was bothered by the language on page 5, lines 20-24, which refers to benefiting persons who are indefinite in number and also the provision for preventing people from becoming burdens to the state. He asked if DOR could do without that section.

Eric Fehlig, DOR tax counsel, responded with some clarification of the four points in the definitions of purely public charity. The not-for-profit corporation and a 501-C3 organization are two different entities. The not-for-profit organization can make money; the money cannot be used for the enrichment of the people who own the organization.

Senator Towe asked if Mr. Fehlig agreed with Mr. Kelley's suggestion to strike the language on lines 15-18, page 5.

Mr. Fehlig answered the language "no gain or profit as evidenced by" does not absolutely require the 501-C3 status, however, it would be eligible for 501-C3. There are a lot of not-for-profit organizations that are not 501-C3 designated by the Internal Revenue Service. He felt there is room for both designations.

Mr. Fehlig continued with the discussion regarding purely public which means not limited to members of the organization.

Senator Towe said General Motors is purely public also. Anyone who wants to buy a share can join. The difference is that General Motors shares its profits. A 501-C3 doesn't share its profits. He also felt the definition should say the organization's activities do not benefit persons who are substantial contributors. That is in federal law and in order to be a 501-C3 the organization has already done that.

Mr. Fehlig referred to the language page 5, lines 22-24 referring to persons benefitted from becoming burdens on society or the state. He stressed this is not intended to be a catch-all category. He indicated we need to be serving the public benefit, not relieving a burden. A symphony would not be classified under this category, however, the YMCA could qualify.

Finally, on the question of absolute gratuity, Mr. Fehlig said there is a difference between operating a business to raise revenue and receiving contributions. Payments based on ability to pay or providing benefits at minimum charge are still classified as a gratuity because they do not provide the overall profit for the organization.

Senator Towe asked if an organization that receives most of its funds through government grants is included in the absolute gratuity category.

Mr. Fehlig replied such an organization would be so classified.

Senator Towe said he is introducing legislation to allow exemption for museums. Under current law, museums and art galleries cannot be exempt if they charge admission, therefore,

they have qualified for exemption under the educational classification. He asked if it is the intent of the amendment to take that classification away.

Mr. Fehlig said educational purposes is characterized by having teachers, students, and an educational curriculum and that is consistent with the Flathead Lake Camp decision. The question is the broad interpretation we are now dealing with which, in effect, says if it provides information it must be educational. This is a very broad expansion and interpretation of the definition.

Senator Towe said that under that narrow definition all art galleries, museums, and zoos would be taxed, which is a brand new tax policy for the state.

Mr. Fehlig said if they don't fall in those parameters now, they should currently be taxed.

Closing by Sponsor:

Senator Eck said this is one of a long line of bills requested by the Department of Revenue and addresses an area that has grown without direction. She said the definition could be limited, but the expanded list of organizations is necessary to rule out organizations that are important and have traditionally been exempt. She felt the bill will take a great deal of work and if the Committee feels it is too broad an area to deal with during the session, it could be assigned to the Revenue Oversight Committee for further study.

EXECUTIVE ACTION ON SENATE BILL 67

Motion:

Senator Koehnke moved Senate Bill 67 be TABLED.

Discussion:

Senator Halligan said he would like to table the bill until action is taken later in the session on medicaid rates.

Amendments, Discussion, and Votes:

There were none.

DATE 1/18/91

COMMITTEE ON Taxation

SB 81 85 86

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
[illegible]	DOR			
Doug Kelley	attorney	85		X
Don Lichman	KXEI radio Chairman	85		X
Brynn Asay	KXEI	85		X
Ed Matter	KXEI	85		X
Katharine Donnelley	Browning Kaleczyc et al	85	☒	X
Eric Feilig	DOR	85		
Gloria [illegible]	Hi Culture Assn	85		
GENE PHILLIPS	PP&L and NTS	81	✓	
Dave Woodgerd	Dept. of Rev.			
Don Hunter		85		X
[illegible]	[illegible]	[illegible]		
Dan Walker	USWEST COMM	81		
Charles Brown	Helena YMCH	85		✓
Richard Miller	Helena - State Library	85		
Debbie Schlussel	Mt. Library Assn	85		
Bill [illegible]		85		✓
John Delaney	MT Catholic Conference	85		✓

ROLL CALL

SENATE TAXATION COMMITTEE

DATE 1/18/91

____ LEGISLATIVE SESSION ____

NAME	PRESENT	ABSENT	EXCUSED
SEN. HALLIGAN			
SEN. ECK	X		
SEN. BROWN	X		
SEN. DOHERTY	X		
SEN. GAGE	X		
SEN. HARP			X
SEN. KOEHNKE	X		
SEN. THAYER	X		
SEN. TOWE	X		
SEN. VAN VALKENBURG	X		
SEN. YELLOWTAIL	X		

Each day attach to minutes.

SENATE TAXATION
EXHIBIT NO. 1
DATE 1/18/91
BILL NO. SB85

AMENDMENTS
SENATE BILL NO. 85
INTRODUCED BILL

Requested by the Department of Revenue
For the Committee on Taxation
Prepared by the Department of Revenue
January 16, 1991

1. Title, line 6.
Following: "OF THE"
Strike: "TERM"
Insert: "TERMS"

2. Title, line 6.
Following: "PUBLIC CHARITY"
Insert: "AND "EDUCATIONAL PURPOSES"

3. Page 6, line 9.
Following: "of education only."
Insert: "(c) The term "educational purposes" includes only those uses which are normally associated with the common scholastic institutions of grammar or elementary school, high school, vocational-technical schools and university or college which are not operated for gain or profit."

EXPALNATION FOR AMENDMENT TO SB 85

The intent behind the exemption for property used exclusively for educational purposes has poorly established parameters. The leading interpretive case, Flathead Lake Methodist Camp (1965) which concluded educational purposes are not limited in terms to the common scholastic institutions of grammar schools, high schools, colleges or universities. Since that decision the educational purposes exemption has been expanded by the District Courts to include "Healthy Eating" seminars held aboard cruise ships and yoga seminars at private retreats (Feathered Pipe Ranch) and religious radio stations (Hiline Radio Fellowship). Political research groups have also been granted educational exemption. The Department's long standing interpretation requiring a planned curriculum, a student body, and teachers has been called into question. If educational purposes is not defined, any group or program which simply provides information in any form may be eligible for a property tax exemption for educational purposes.

The proposed amendments to the code will limit the exemption to uses which are normally associated with common scholastic institutions which have a curriculum, teachers and students.

SENATE TAXATION
EXHIBIT NO.
DATE 1/13/91
BILL NO. SB 85

SB 85, with the proposed amendment, is an attempt to more clearly define property tax exemptions for "institutions of purely public charity" and "property used exclusively . . . for educational purposes" found in § 15-6-201, MCA. Although these exemptions have been on the books since the 1889 Constitution they have always lacked comprehensive definitions. The determination of legislative intent has been left to the courts.

INSTITUTION OF PURELY PUBLIC CHARITY

Montana Supreme Court cases have established some parameters for the intent behind "institutions of purely public charities." The recent decision in Steer, Inc. v. Department of Revenue, decided December 11, 1990, clarified some more disputed points. Steer, Inc. clarified, in order to be exempt from taxation, the property must be directly used for the charitable purpose. It is now clear a business operation which raises revenues which are in turn are applied towards a charitable purpose, is not eligible for a charitable exemption. Property must be used for purely public charitable purposes rather than owned by a charitable institution. The Steer, Inc. decision also established that the dissemination of religious doctrine is not a qualifying charitable use, a point that has been in dispute since the 1965 Montana Supreme Court decision in Flathead Lake Methodist Camp which stated: "A charity may be devoted to bringing people under religious influence."

Many other questions regarding what is a charity still remain and will certainly be litigated if not defined by the legislature. Is charity limited to traditional humanitarian efforts which relieve a government burden or can it include any activity which generally benefits society? Other states have included in their definition of charity, cultural and recreational uses such as a symphony or a park. Must the property be owned by the charitable institution as well as used for the charitable purposes? Some property which may be used for a charitable purpose is owned by an entity other than the charity institution. The owner is in the business of owning and operating rental properties for a profit. Should his property be exempt from taxation based upon the use by the renter?

The proposed amendments to the code will clarify that a charity includes only humanitarian purposes and that the property must be owned and used by the charitable organization for humanitarian purposes relieving a government burden.

Alexis Adams
SENATE TAXATION
EXHIBIT NO. 2
DATE 1/18/91
BILL NO. SB85

GENERAL DISCUSSION

SB 85, with the proposed amendment, is an attempt to more clearly define property tax exemptions for "institutions of purely public charity" and "property used exclusively . . . for educational purposes" found in § 15-6-201, MCA. Although these exemptions have been on the books since the 1889 Constitution they have always lacked comprehensive definitions. The determination of legislative intent has been left to the courts.

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The proposed amendments to the code will clarify that a charity includes only humanitarian purposes and that the property must be owned and used by the charitable organization for humanitarian purposes relieving a government burden.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 18 day of Jan., 1991.

Name: Katharine S. Donnelly

Address: 139 East Chance Gulch
Helena 59624

Telephone Number: 449-6220

Representing whom?

myself & my law firm

Appearing on which proposal?

SB 85

Do you: Support?____ Amend?____ Oppose? X

Comments:

While I generally support an idea of an amendment defining "purely public charity", the proposed definition encompasses much ambiguity, particularly the requirement that an exempt institution prevent persons from becoming burdens or charges of the state. This requirement has been interpreted in a very result-oriented fashion in other jurisdictions applying this test.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 18th day of January, 1991.

Name: Charles Brown

Address: 1530 Peosta

Helena, Mt. 59601

Telephone Number: 442-9622

Representing whom?

Helena Family YMCA

Appearing on which proposal?

Do you: Support?____ Amend?____ Oppose? X

Comments:

The bill is unclear and too broad in interpretation. This bill would hinder the charitable service to the community by 501(c)(3) organization.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

EXECUTIVE ACTION ON SENATE JOINT RESOLUTION 11

Recommendation and Vote:

Senator Doherty said the justification for doing the study on the liquor license quota system now is the gambling issue. Restaurants have to compete with gaming establishments for liquor licenses and that competition is very tough.

Senator Doherty moved SJR 11 Do Pass.

The motion CARRIED on a roll call vote (Exhibit #5).

EXECUTIVE ACTION ON SENATE BILL 69

Discussion:

Senator Eck said she felt the bill could not be amended to suit Senator Crippen's concerns. She asked Jeff Martin to present some proposed amendments to the bill. Mr. Martin submitted some suggested changes from Hugh Zackheim (Exhibit #6). He said some confusion arose over the double negative which said since the restrictive covenants did not have anything about using the land for residential or commercial use then it also could not be classified as agricultural land. The purpose of the amendments was to ensure that conservation easements were not taxed other than the current method.

The Committee decided to hold any further action until they had the second reading (yellow) copy of the bill to work from at a future meeting.

EXECUTIVE ACTION ON SENATE BILL 85

Amendments, Discussion, and Votes:

Senator Eck said she did not want to accept the amendments proposed by the Department of Revenue which would define "educational purposes".

Senator Eck moved the amendments on page 5, striking lines 15 through 17, and lines 22 through 24.

The motion CARRIED unanimously.

Senator Brown asked how the bill would now affect the radio station in Havre (Highline Christian Fellowship).

Senator Eck said District Court ruled for the radio station in that case. DOR wanted the amendments that redefine educational purposes and if those amendments were adopted, DOR would appeal the ruling to the Supreme Court.

Senator Towe referred the Committee to the language "indefinite in number" on lines 20 -21, page 5. He felt it is an impossible definition and should be stricken from the bill. Senator Towe moved to strike lines 20 and 21 in their entirety.

The motion CARRIED unanimously.

Senator Towe moved to further amend the bill on page 6, line 1, following "gratuity" by inserting "or grants" and on line 2 following "merchandise" by inserting "memberships,".

The motion CARRIED unanimously.

Senator Harp asked if the Department of Revenue brought this bill to the legislature.

Senator Eck replied the problem was presented to the Revenue Oversight Committee by the Department and ROC then proceeded with the bill.

Recommendation and Vote:

Senator Eck moved SB 85 Do Pass As Amended.

The motion CARRIED unanimously with Senator Yellowtail excused.

ADJOURNMENT

Adjournment At: 10:00 a.m.

SENATOR MIKE HALLIGAN, Chairman

JILL D. ROHYANS, Secretary

MH/jdr

ROLL CALL

SENATE TAXATION COMMITTEE

DATE 2/5/91

52nd LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. HALLIGAN	X		
SEN. ECK	X		
SEN. BROWN	X		
SEN. DOHERTY	X		
SEN. GAGE	X		
SEN. HARP	X		
SEN. KOEHNKE	X		
SEN. THAYER	X		
SEN. TOWE	X		
SEN. VAN VALKENBURG	X		
SEN. YELLOWTAIL			X

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 6, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 85 (first reading copy -- white), respectfully report that Senate Bill No. 85 be amended and as so amended do pass:

1. Page 5, lines 15 through 17.
Strike: "makes" on line 15 through "it" on line 17

2. Page 5, lines 20 through 24.
Strike: subsections (ii) and (iii) in their entirety
Renumber: subsequent subsection

3. Page 6, line 1.
Following: "gratuity"
Insert: "or grants"

4. Page 6, line 2.
Following: "merchandise"
Insert: ", memberships,"

Signed: _____
Mike Halligan, Chairman

2-6-91
Amd. Coord.

2-6 1:15
Sec. of Senate

2001; (2) it changes the total payment made for the incentive from $1.25 million to $6 million; and (3) it changes the cap from $1 million to $1.5 million on any one plant.

Proponents' Testimony:

Don Sterhan, Alcotech Partnerships; Shirley Bell, Farmer Valley Company; Bob Stephens, Montana Grain Growers Association; Linda Nielson, Farmer; SEN TVEIT; REP. RANEY; and REP. FOSTER went on record in support of SB 77.

Opponents' Testimony: None

Questions from Committee Members: None

Closing by Sponsor:

SEN. ECK made no closing statement.

HEARING ON SB 85

Presentation and Opening Statement by Sponsor:

SEN. ECK, Senate District 40, Bozeman, stated SB 85 is an act clarifying the meaning of the term "institutions of purely public charity". This would be things such as property owned by institutions purely public charity and directly used for purely public charitable purposes such as cemeteries.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

SEN. ECK made no closing statement.

HEARING ON SB 159

Presentation and Opening Statement by Sponsor:

SEN. MANNING, Senate District 18, Great Falls, stated that SB 159 is an act to exempt golf carts from the fee in lieu of tax for off-highway vehicles by providing that a golf cart is not an off-highway vehicle.

Proponents' Testimony:

Cort Harrington, Montana County Treasurers Association; and Dick Michelloti, Cascade County Treasurer went on record in support of SB 159.

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL DATE 2/19/91

NAME	PRESENT	ABSENT	EXCUSED
REP. DAN HARRINGTON	✓		
REP. BEN COHEN, VICE-CHAIRMAN	✓		
REP. BOB REAM, VICE-CHAIRMAN	✓	+	
REP. ED DOLEZAL	✓		
REP. JIM ELLIOTT	✓	+	
REP. ORVAL ELLISON	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. MARIAN HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. BEA MCCARTHY	✓		
REP. TOM NELSON	✓		
REP. MARK O'KEEFE	✓	+	
REP. BOB RANEY	✓		
REP. TED SCHYE	✓		+
REP. BARRY "SPOOK" STANG			✓
REP. FRED THOMAS	✓	+	
REP. DAVE WANZENRIED	✓	+	

REP. GILBERT said if we keep poking holes in I-105, we are going to repeal I-105 just like we are going to get a sales tax in Montana--piece by piece. If we are going to repeal I-105, then someone should introduce a bill to repeal it. This is the way it should be done, and he will oppose HB 806 on those grounds.

REP. McCAFFREE asked **Lee Heiman** if all conservation districts county wide. **Mr. Heiman** said he didn't know. **Mr. Beck** said that there are 59 conservation districts which is three more than counties. **REP. McCAFFREE** said if that is the case, it separate a conservation district from RIDs. Most of them are a specific area within the county, whereas, conservation districts are county wide. You can not put the two together.

REP. FAGG in regards to **REP. REAM'S** point, said the Attorney General looked at this and researched it very thoroughly. We can not in a couple of minutes decide that this is like a SID and we can overturn the AG's opinion. He did not think this was appropriate. He also stated that he would have to oppose HB 806 for the same reasons given by **REPS. McCAFFREE** and **GILBERT** said. The people voted for I-105, and we should stick with it until they vote to repeal it.

Vote: Motion that HB 806 carried 11 to 8 on a roll call vote. **EXHIBIT 13**

EXECUTIVE ACTION ON SB 85

Motion/Vote: **REP. FAGG MOVED SB 85 BE CONCURRED IN.** Motion carried unanimously on a voice vote.

EXECUTIVE ACTION ON SB 194

Discussion:

CHAIR HARRINGTON said this was the generation skipper bill. **REP. O'KEEFE** said he had a problem with the affective date on SB 194. How do we make the affective date right in terms of coordinating it with the tax year? **Denis Adams, DOR,** said for this type of tax, it really makes no difference what the affective date is because the person will have died before the estate is probated. He didn't see a problem with the affective date. **REP. O'KEEFE** said he would like to see the codes on the books; and if the affective date doesn't matter then we might as well put them in at the October 1st date.

Motion: **REP. O'KEEFE** moved to amend SB 194. To take out the new section effective date.

Discussion:

REP. RANEY said he understood what **REP. O'KEEFE** is saying; but this is something that they don't even use. We will just be running this back to the Senate and it is not that important.

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL DATE 3/5/91

NAME	PRESENT	ABSENT	EXCUSED
REP. DAN HARRINGTON	✓		
REP. BEN COHEN, VICE-CHAIRMAN		✓	
REP. BOB REAM, VICE-CHAIRMAN	✓		
REP. ED DOLEZAL	✓		
REP. JIM ELLIOTT		✓	
REP. ORVAL ELLISON	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. MARIAN HANSON	✓		
REP. DAVID HOFFMAN		✓	
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. BEA MCCARTHY	✓		
REP. TOM NELSON	✓		
REP. MARK O'KEEFE	✓		
REP. BOB RANEY	✓		
REP. TED SCHYE		✓	
REP. BARRY "SPOOK" STANG	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED		✓	

HOUSE STANDING COMMITTEE REPORT

March 5, 1991

Mr. Speaker: We, the committee on Taxation report that Senate Bill 85 (third reading copy -- blue) be concurred in .

Signed: _____
Dan Harrington, Chairman

Carried by: Rep. McCarthy